

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Market Structure Branch ****

**RESOLUTION T-16571
October 25, 2001**

R E S O L U T I O N

RESOLUTION T-16571. PACIFIC BELL. (U-1001-C). ORDER ACCEPTING, SUBJECT TO ANY ADJUSTMENTS RESULTING FROM THE NRF AUDIT, PACIFIC BELL'S ANNUAL RATE OF RETURN ADVICE LETTER FILING IN COMPLIANCE WITH DECISION 98-10-026.

BY ADVICE LETTER NO. 21676 FILED ON April 3, 2001.

SUMMARY

This Resolution accepts Pacific Bell's (Pacific) annual rate of return advice letter filing subject to any corrections or adjustments to the reported rate of return that may be appropriate as a result of the NRF audit.

Since sharing has been suspended in Decision (D.) 98-10-026, there is no impact on rates as a result of this filing.

BACKGROUND

New Regulatory Framework (NRF)

Decision 98-10-026, resulting from the third triennial NRF review, adopted the suspension of sharing effective January 1, 1999, continued the requirement for the reporting of rates of return, phased out existing Z factor adjustments and eliminated new Z factor adjustments, and included a provision for the consideration of only a very limited set of exogenous costs, and the continued rate caps and floors.

PACIFIC'S ANNUAL RATE OF RETURN FILING

Pursuant to D. 98-10-026 Pacific filed its Annual Rate of Return advice letter, which is to be filed every April 1 for the purpose of reporting its actual rate of return, and the market-based, benchmark, ceiling, and floor rates of return last found reasonable.

Pacific also filed a supplement to its advice letter to report a slight modification to its originally reported ROR. Pacific initially reported an annual rate of return (ROR) for the year 2000 of 12.79%, which was later modified in Pacific's supplementary filing to 12.83%. Other references reported in Pacific's filing included the following rates of return:

Market-Based	10.00%
Benchmark	11.50%
Ceiling	15.00%
Floor	6.75%

NOTICE/PROTESTS

Pacific states that a copy of Advice Letter No.21676 had been mailed to competing and adjacent utilities and/or other utilities and interested parties as requested. Notice of Advice Letter No.21676 was noticed in the Commission's Daily Calendar of April 6, 2001.

The Commission's Office of Ratepayer Advocates (ORA) filed a timely protest to this advice letter on April 23, 2001. ORA asserts that a determination of Pacific's actual ROR would be premature without ORA's analysis of supporting workpapers, which had not been received of the writing of this resolution, and without the findings from the Telecommunication's Division's NRF audit (currently underway).

Pacific Bell filed a timely response to ORA's protest on May 1, 2001. Pacific Bell contends that the advice letter filing is "a separate matter" from the current audit, hence, changing the process is an unjustified modification of current requirements from D.98-10-026. The company also contends that characterization of Pacific's ROR as excessive is inappropriate and unsupportable. Pacific cites text from D. 98-10-026 that indicates the Commission expects to permanently eliminate sharing during the next NRF review, and cites 8 findings of fact from D.98-10-026 to show the Commission's support for this contention. Regarding ORA's request for workpapers, Pacific states that they were not required to be filed with the advice letter and that they provided a complete response to ORA's data request on April 19.

DISCUSSION

D. 98-10-026 suspended sharing and reduced the annual sharable earnings filing to an information only rate of return report. Had it not been suspended the sharing resulting

from this filing would have fallen into the category of sharing 50% of the earnings between the benchmark and ceiling rates of return. This would have amounted to \$64,410,520 plus interest. Pacific has filed this advice letter within that context. In the forthcoming 4th triennial NRF review, it is expected that the Commission will address, among other things, the issue of suspended sharing, as well as the results from the NRF audit. It is possible that outcome of the Commission's examination of the NRF rules and audit results could have an effect on the year 2000 results of operations. In order to preserve the Commission's options during the NRF review, Pacific's year 2000 advice letter shall be accepted subject to any corrections or adjustments to the reported rate of return that may be appropriate as a result of the NRF audit.

COMMENTS ON DRAFT RESOLUTION

The draft resolution was mailed to parties in accordance with Public Utilities Code Section 311(g)(1). Comments were received from ORA on September 19, 2001 and from Pacific on September 26, 2001. No other comments were received. No replies were received.

ORA strongly recommends that the Commission adopt the TD's draft resolution T-16571. ORA points out that the Commission has recently issued OIR 01-09-001/OII 01-09-002 (NRF OIR/OII) on September 6, 2001, and that TD's NRF audit of Pacific is currently underway. ORA believes that depending on the findings and/or corrective measures adopted by the Commission in the NRF OIR/OII the results presented in the audit report could have an impact on Pacific's year 2000 return. It was further pointed out that parties were asked to identify audit findings that are relevant to Phase 3 issues, where it will be determined if or the extent to which NRF should be revised.

In its comments, Pacific recommends that the draft resolution be revised to eliminate the "subject to refund" provision for the following reasons: (1) it is inconsistent with D.98-10-026, (2) there is no refund issue associated with the advice letter, (3) the nature and purpose of the reported ROR cannot be retroactively changed, (4) the Commission would be acting contrary to law, (5) the Commission would be acting in excess of its authority, and (6) the Commission would be violating Pacific's constitutional rights.

Pacific also disagrees with finding 5 of the draft resolution. Pacific states that they provided a complete set of workpapers and documents, as requested by ORA, on April 19, 2001.

DISCUSSION OF COMMENTS ON DRAFT RESOLUTION

We shall accept Pacific's 2000 rate of return advice letter subject to any corrections or adjustments to the reported rate of return that may be appropriate as a result of the NRF audit.

FINDINGS

- 1) Advice Letter No. 21676 was filed in a timely manner.
- 2) Pacific Bell reports that for the year 2000 they earned a ROR of 12.79%.
- 3) The IEMR report, which supports this filing, was filed as part of the monitoring report on the same day.
- 4) A timely protest to this advice letter was filed by ORA.
- 5) ORA pointed out that a NRF audit is currently being conducted by the Telecommunications Division for review in the 4th triennial NRF review.
- 6) ORA is also conducting a shadow audit of the Telecommunication's Division's audit.
- 7) A supplementary advice letter (no. 21676A) was received by the TD on May 11, 2001, which changed the reported ROR for the year 2000 to 12.83%.
- 8) The reference RORs are as follows:
 - Market-Based – 10%
 - Benchmark – 11.50% (+ 150 basis points)
 - Ceiling – 15% (+ 500 basis points)
 - Floor – 6.75% (- 325 basis points)
10. Sharing is currently suspended pursuant to D. 98-10-026.
11. Had there been sharing Pacific would have shared with ratepayers \$64,410,520 plus interest.
12. An audit of the Company's books and records for the record period of 1997 through 1999, as currently being conducted, is expected to be included in the 4th Triennial NRF review.
13. The 4th triennial NRF review could possibly have an effect on the year 2000 results of operations.
14. The future of sharing (i.e. continued suspension, permanent elimination, reinstatement, or some other modification) may be an issue in the next NRF review.

THEREFORE IT IS ORDERED THAT:

1. Pacific's Annual Rate of Return advice letter for the year 2000 shall be accepted subject to any corrections or adjustments to the reported rate of return which may be appropriate as a result of the NRF audit.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 25, 2001. The following Commissioners approved it:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN

Executive Director

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners